IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO. 27 OF 2004

Manohar Ramchanddra Mekhale & ors. Applicants

Vs.

Sunil Dattatraya Mekhale Respondent

Ms.Deepa Marwankar for applicants.
Mr.Machhindra Patil for respondent.

CORAM: B.H.MARLAPALLE,J.
August 11, 2005.

ORAL ORDER:

. Heard. Rule. Mr.Patil waives service.

. The affidavit-in-reply has been filed and thus the revision application is ready for hearing. Rule is, therefore, made returnable forthwith and more so while by order dated 21-7-2003 ad-interim relief in terms of prayer clause (d) was granted by this Court.

. Regular Civil Suit No.322 of 2001 was decreed by the trial Court on 28-6-2002. The defendants - four real brothers challenged the said decree by filing an appeal on 16-9-2002 and as there was delay in filing the appeal Misc.Civil Application No.141 of 2002 was filed for condonation of the same. As per the applicants the delay caused was of 81 days in

filing the appeal. This application has been rejected by the 4th Additional District Judge at Pandharpur by the impugned order dated 15-3-2003. The lower Appellate Court held that the applicants could not prove that they were prevented by sufficient cause from preferring the appeal within the period of limitation.

. In the application for condonation of delay it was submitted that only defendant no.1 had filed the written statement and the other three brothers did not appear. Defendant no.1 also could not remain present on 28-6-2002 before the trial Court as his daughter was hospitalized at Miraj. The only reason put up for condonation of delay was poor financial conditions and it was claimed that all the applicants were labourers. The delay caused was of 81 days and the applicants were rustic villagers obviously illiterate agricultural labourers. The statutory remedy of appeal could not have been defeated by the lower Appellate Court in such a situation and the approach of the lower Appellate Court is unsustainable in the facts of this case. The delay deserved to be condoned even without imposing costs. In such circumstances the hyper technical approach

adopted by the lower Appellate Court is indefensible.

. The revision application, therefore, succeeds and the same is hereby allowed. MCA No.141 of 2002 is allowed and the delay of 81 days in filing the appeal is hereby condoned. The appeal be registered and heard and decided expeditiously. Rule is made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J.)